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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/594,410	09/26/2006	Shaow Lin	DC10102 PCT1	9220
137 7590 02/27/2009 DOW CORNING CORPORATION CO1232 2200 W. SALZBURG ROAD P.O. BOX 994 MIDLAND, MI 48686-0994				
EXAMINER LOEWE, ROBERT S				
ART UNIT		PAPER NUMBER		
1796				
NOTIFICATION DATE		DELIVERY MODE		
02/27/2009		ELECTRONIC		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

patents.admin@dowcorning.com

Office Action Summary

Application No.

10/594,410

Applicant(s)

LIN, SHAOW

Examiner

ROBERT LOEWE

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 17 February 2009.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 3, 4 and 7-9 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 3 is/are allowed.
- 6) ☒ Claim(s) 4 and 7-9 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 26 September 2006 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftperson's Patent Drawing Review (PTO-946)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

Continued Examination Under 37 CFR 1.114

A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 2/17/09 has been entered.

Response to Arguments

Applicant's arguments/amendments have been fully considered and are found to be persuasive in part. Specifically, the Examiner agrees that Cen et al. does not teach or suggest the process for preparing vesicles as required by independent claim 3. Further, none of the art of record teaches or renders obvious such a process. Therefore, claim 3 is deemed to be in condition for allowance (see reasons of allowance below). However, the previously relied upon prior art rejection of claims 4 and 7-9, which are product claims, is maintained. Specifically, Cen et al. employs several embodiments in which no water miscible volatile solvent is added to the composition. Instant claim 3 teaches the addition of, and subsequent removal of a water miscible volatile solvent. Therefore, in those instances where Cen et al. does not teach the addition of any water miscible volatile solvent, the product would not contain any water miscible volatile solvent, which would satisfy product claims 4 and 7-9.

Claim Rejections - 35 USC § 102

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Claims 4 and 7-9 are rejected under 35 U.S.C. 102(b) as being anticipated by Cen et al. (US Pat. 6,632,420, which is cited the PTO-892 form from the previous Office action).

Claim 4: Cen et al. teaches a process for making a clear personal care product in the form of a microemulsion (claim 38 of Cen et al.) comprising mixing 10 to 50% by weight of water (6:59), preferably between 10 to 30% by weight of an alcohol (6:65-67) such as ethanol (6:61), and 1 to 20% by weight of a silicone polyether (5:21-23) which satisfies all of the structural limitations of component (A) of instant claim 3 (4:37-5:23). Further, the sum of the weight % of components (A), (B) and (C) may be equal to 100% through normalization-that is to say, components (A), (B) and (C), present at any weight percent, can be normalized such that the sum of the weight % of components (A), (B) and (C) equals 100%. This limitation does not limit the microemulsion composition as only containing ingredients (A), (B) and (C), as instant claim 3 allows for other components to be present. Because Cen et al. teaches combining components (A), (B) and (C) in the amounts required by instant claim 3, it follows that the combination of components (A), (B) and (C) will inherently form an aqueous dispersion of the silicone polyether copolymer. Cen et al. further teaches mixing the ingredients to form a microemulsion. Because Cen et al. teaches the claimed ingredients of instant claim 3 in the claimed amounts, and further teaches the process limitations of instant claim 3, it follows that the process taught by Cen et al. is capable of forming vesicles. The courts have stated that "Where the claimed and prior art

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products are identical or substantially identical in structure or composition, or are produced by identical or substantially identical processes, a *prima facie* case of either anticipation or obviousness has been established.

Claims 7-9: Cen et al. teaches a personal care product comprising the microemulsion of instant claims 3 and 4 (claims 7 and 9).

Allowable Subject Matter

Claim 3 is allowed. Specifically, Cen et al. does not teach or suggest a process in which the water miscible volatile solvent is removed as required by step (III) of the instant claims. Further, there is no prior art of record which would render obvious such a step.

Correspondence

Any inquiry concerning this communication or earlier communications from the examiner should be directed to ROBERT LOEWE whose telephone number is (571)270-3298. The examiner can normally be reached on Monday through Friday from 5:30 AM to 3:00 PM EST.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Randy Gulakowski can be reached on (571) 272-13021302. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished

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applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/R. L./

Examiner, Art Unit 1796

19-Feb-09

/Randy Gulakowski/

Supervisory Patent Examiner, Art Unit 1796